

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN JIM SHOCKLEY**, on January 17, 2003 at 8 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Jim Shockley, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Jeff Laszloffy, Vice Chairman (R)
Rep. George Everett (R)
Rep. Tom Facey (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Michael Lange (R)
Rep. Bruce Malcolm (R)
Rep. Brad Newman (D)
Rep. Mark Noennig (R)
Rep. John Parker (D)
Rep. Holly Raser (D)
Rep. Diane Rice (R)
Rep. Scott Sales (R)
Rep. Ron Stoker (R)

Members Excused: Rep. Bill Thomas (R)
Rep. Christopher Harris (D)

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Lisa Swanson, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: 208, 1/8/2003; 209, 1/8/2003; 210,
1/8/2003; 211, 1/8/03; 212, 1/8/03
Executive Action: HB 52; HB 208; HB 54; HB 156

HEARING ON HB 212**Sponsor:** REP. JIM SHOCKLEY, HD 61, Victor**Opening Statement by Sponsor:**

REP. SHOCKLEY opened on HB 212, stating that he is carrying this bill on behalf of the Law and Justice Interim Committee. The bill would eliminate the requirement that an award of punitive damages must be unanimous as to liability and amount. He stated 27-1-221 would be changed to reflect the Montana Supreme Court case, Finstad v. W.R. Grace & Co. He explained that Finstad held that the portion of section 221 requiring that punitive damages must be unanimous as to liability and amount violates Article II, section 26 of the Montana Constitution. He stated that portion of the Constitution guarantees a verdict by a two-thirds majority in all civil cases.

{Tape: 1; Side: A; Approx. Time Counter: 1 - 28}

Proponents' Testimony: None**Opponents' Testimony:** None**Informational Testimony:** None**Questions from Committee Members and Responses:**

REP. RICE asked Greg Petesch to walk the committee through the steps if they change this law. He stated that to keep the statute as it is would require amending the Montana Constitution.

{Tape: 1; Side: A; Approx. Time Counter: 29 - 61}

Closing by Sponsor:

REP. SHOCKLEY closed on HB 212.

{Tape: 1; Side: A; Approx. Time Counter: 62 - 63}

HEARING ON HB 208**Sponsor:** REP. JIM SHOCKLEY, HD 61, Victor**Opening Statement by Sponsor:**

REP. SHOCKLEY opened on HB 208, stating that this bill would clarify the termination of parental rights without requiring a

treatment plan if two medical doctors or clinical psychologists submit testimony that the parent cannot assume the role of parent within a reasonable time. **REP. SHOCKLEY** explained that the language on page two, line 19 would be amended to state "within a reasonable time."

{Tape: 1; Side: A; Approx. Time Counter: 64 - 82}

Proponents:

Kathy Ostrander, Bureau Chief, Department of Public Health and Human Services (DPHHS), supported HB 208.

{Tape: 1; Side: A; Approx. Time Counter: 83 - 87}

Questions from Committee Members and Responses:

REP. EVERETT asked Ms. Ostrander how often this occurs. **Ms. Ostrander** stated that this normally does not occur without a treatment plan and occurs two to three times a year.

Closing by Sponsor:

REP. SHOCKLEY closed on HB 208.

HEARING ON HB 209

Sponsor: **REP. SHOCKLEY**, HD 61, Victor

Opening Statement by Sponsor:

REP. SHOCKLEY opened on HB 209, stating that this bill would conform the effect of a lien resulting from filing a transcript of a judgment in another county to the lien resulting from the docketing of a judgment. The language of the bill would extend the lien from six to ten years.

{Tape: 1; Side: A; Approx. Time Counter: 89 - 133}

Proponents' Testimony: None

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. STOKER asked about filing in the second county and the time period of the lien. REP. SHOCKLEY stated it would not change and that it would be the same in the second county as the first.

Closing by Sponsor:

REP. SHOCKLEY closed on HB 209.

{Tape: 1; Side: A; Approx. Time Counter: 134 - 142}

HEARING ON HB 210

Sponsor: REP. JIM SHOCKLEY, HD 61, Victor

Opening Statement by Sponsor:

REP. SHOCKLEY opened on HB 210, stating that this bill would allow an appeal to district court based upon the denial of a motion to withdraw a guilty plea or "nolo contendere" by a court of limited jurisdiction. He gave an example where a person pled guilty, then he found out his rights, wanted to withdraw his plea and the judge would not allow it. He stated that the Constitution mandates a plea be entered into voluntarily and knowingly. This bill would give all persons knowledge of what the law is by looking at the books.

{Tape: 1; Side: A; Approx. Time Counter: 143 - 167}

Proponents' Testimony:

Allie Bovingdon, Assistant Attorney General, Department of Justice, (DOJ), supported HB 210.

Opponents' Testimony:

Cathy McGowan, Montana County Attorneys Association, opposed HB 210. She stated that records do get stale, and the bill needs a time limit within which a defendant may appeal.

{Tape: 1; Side: A; Approx. Time Counter: 168 - 201}

Informational Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:

REP. SHOCKLEY closed on HB 210. He stated that Ms. McGowan had a good idea regarding a statute of limitations on appealing to district court. He suggested giving the defendant 90 days to object.

{Tape: 1; Side: A; Approx. Time Counter: 202 - 209}

HEARING ON HB 211

Sponsor: **REP. NEWMAN, HD 38, Butte**

Opening Statement by Sponsor:

REP. NEWMAN opened on HB 211 stating that this bill deals with the Board Of Pardons and Parole (the Board). He explained that the bill would add two auxiliary members to the Board, authorize multiple boards to hear cases around Montana, authorize telephone conference hearings, and authorize the Board to issue up to two ten day furloughs. He stated that most Montana citizens believe a government closest to the people is best; hence, the part-time citizen Board. Last year the Board heard 1,149 offenders for parole, conducted 190 revocation hearings, held over 50 rescission hearings, processed more than 500 administrative progress reviews, and decided approximately 600 other issues. He summarized that the three member, part-time Board heard about 2500 cases in 2002.

He stated in this time of a limited budget, this needs to be addressed as the Board is between a "rock and a hard place." Prisoners have due process rights to fair hearings. It is important the Board be able to do its job. He mentioned **REP. JUNEAU'S** bill, HB 26, which mandated one of the Board members be Native American. He stated that HB 211 addressed the concerns of HB 26 in a different manner. He explained that HB 211 would require a three-member Board, plus four auxiliary members creating a pool of seven to draw from. He stressed that HB 211 would require all members to have knowledge and understanding of Native American culture, by experience and/or training, but does not mandate gender or race of the Board members.

{Tape: 1; Side: A; Approx. Time Counter: 210 - 475}

Proponents' Testimony:

Craig Thomas, Executive Director, Montana Board of Pardons and Parole, supported HB 211. He stated that this is the third

session they have tried to change the Board due to rising prison population and case load. He stated that the Board was created by the 1891 Constitution.

{Tape: 1; Side: A; Approx. Time Counter: 476 - 511}

He stated that the intent of the original legislature was to have a Board hear all of the cases. He emphasized that as the prison population exploded and moved into regional facilities, and pre-release centers, it was difficult for one board to hear all the cases. He explained that in 1981, the legislature afforded the Board the ability to appoint hearings examiners, which worked for years. He said that the Montana Supreme Court recently ruled that using hearings examiners was inappropriate, and that a majority of the Board, two, had to hear and act on the cases. He opined that the Legislative Audit Division recommended that the Board use the panel procedure which would provide each inmate a Board hearing. He stated that at present the Board conducts hearings in eight cities at eleven facilities. He stated they are so overloaded that they are asking inmates to waive their rights to not only a majority of the Board but also to waive their rights under George.

{Tape: 1; Side: B; Approx. Time Counter: 1 - 64}

Coleen White, Attorney, DOC, supported HB 211. She stated that this bill would help with inconsistencies in the law.

EXHIBIT(juh10a01)

{Tape: 1; Side: B; Approx. Time Counter: 65 - 74}

Mike McKee, Citizen Board Member, Auxiliary Member, supported HB 211. He stated that Montana is a huge state and the traveling is a great hardship. Each Board member is required to have some credible experience or background related to the field to qualify them for the Board. He stated that this limits the potential pool of citizen members, as opposed to other boards in Montana.

{Tape: 1; Side: B; Approx. Time Counter: 75 - 191}

Opponents' Testimony: None

Informational Testimony:

Kathy McGowan, Montana County Attorney's Association, testified on the victim portion of the bill. She stated that their major concern is Section 6, and urged the committee to pay close attention to this part of the bill. She had concerns over telephonic hearings.

{Tape: 1; Side: B; Approx. Time Counter: 192 - 221}

DON HARGROVE, Gallatin County, testified about his concern for the Victim Witnesses Program. He stated his concern regarding Section 6 about the language which was stricken.

Questions from Committee Members and Responses:

REP. EVERETT asked Craig Thomas whether other states mandate parole board members be of a certain race. **Mr. Thomas** stated he did not know the answer but would get him an answer at a later date.

REP. GUTSCHE asked Ms. McGowan about what she would like to see in Section 6 of the bill. **Ms. McGowan** responded that the current language is fine and they want to see it remain. **REP. GUTSCHE** asked **REP. NEWMAN** whether his bill and **REP. JUNEAU'S** bill could be merged. **REP. NEWMAN** believes the bills could be crafted together.

{Tape: 1; Side: B; Approx. Time Counter: 222 - 290}

REP. NOENNIG asked Mr. Thomas about the proposed changes to the Board such as training, knowledge of Native American culture, and what other states are doing. **Mr. Thomas** responded that all members need to have knowledge and/or training of the Native American culture. He stated many states do not conduct hearings at all and only do paper reviews. He stated there are other avenues such as a telephonic interview, and asking other parole boards to conduct hearings through the interstate compact review process. **REP. NOENNIG** asked about contacting victims of parole hearings. Mr. Thomas stated there would be no change and that victims have always had the right to be notified and attend hearings or submit a statement.

{Tape: 1; Side: B; Approx. Time Counter: 291 - 387}

Closing by Sponsor:

REP. NEWMAN closed on HB 211. He stated that most states have full-time Boards and not a citizen Board. He stated that most states do not require the great amount of travel which Montana Board members must endure. He emphasized the 2,500 cases the Board looked at in 2002. He stated that this bill would help make the Board more effective and efficient while respecting the rights of victims, inmates and the public.

{Tape: 1; Side: B; Approx. Time Counter: 388 - 482}

EXECUTIVE ACTION ON HB 52

Motion: REP. LASZLOFFY moved that HB 52 DO PASS.

Discussion:

REP. NEWMAN stated that based on statistics, he believes these crimes are happening. He stated that to let other bills take care of this issue would be bad public policy. REP. RASER commented that a just society may be measured by how it treats its most vulnerable. REP. SHOCKLEY asked about the cross burning case before the U.S. Supreme Court.

Vote: Motion failed 9-9 roll call vote with CLARK, HARRIS, FACEY, GALLUS, PARKER, RASER, NOENNIG, GUTSCHE, AND NEWMAN voting aye.

{Tape: 2; Side: A; Approx. Time Counter: 139 - 158}

Motion/Vote: REP. LASZLOFFY moved that HB 52 BE TABLED. Motion carried 9-7 with CLARK, FACEY, GALLUS, GUTSCHE, NEWMAN, PARKER, and RASER voting no.

EXECUTIVE ACTION ON HB 156

Motion: REP. RASER moved that HB 156 DO PASS.

Discussion:

The Committee discussed HB 156. REP. CLARK emphasized the inconsistency of declaring a youth dangerous who commits a misdemeanor when adults who drink and drive are much more dangerous. REP. NEWMAN commented that he liked the bill as is. REP. LASZLOFFY moved to postpone the bill to give time for amendments.

Motion/Vote: REP. LASZLOFFY moved that HB 156 BE INDEFINITELY POSTPONED. Motion carried unanimously 14-0 voice vote.

EXECUTIVE ACTION ON HB 208

Motion REP. LANGE moved that HB 208 DO PASS.

Discussion:

Committee discussed what a reasonable time would be.

Vote: Motion carried unanimously 14-0 voice vote.

EXECUTIVE ACTION ON HB 54

Motion: REP. NEWMAN moved that **HB 54 DO PASS.**

Discussion:

REP. NEWMAN stated that this bill was heard a couple days ago and that it would add electronic communications to four existing crimes in the code. He emphasized it would not change or expand the existing crimes.

Motion/Vote: REP. NOENNIG moved that **HB 54 BE AMENDED.** (NOENNIG Amendment.) **Motion** to amend **failed 7-10 roll call vote with REPS. CLARK, SALES, LANGE, FACEY, HARRIS, NOENNIG, AND NEWMAN** voting **yes.**

Motion: REP. NEWMAN moved that **HB 54 BE FURTHER AMENDED.** (NEWMAN AMENDMENT)

Discussion:

The Committee discussed amending the language in HB 54. John McMaster discussed and proposed the amending language. **REP. NEWMAN** suggested that page 6, line 6 be amended.

Vote: Motion to Amend (Newman amendment) **carried unanimously 14-0 voice vote.**

Motion/Vote: REP. NOENNIG moved that **HB 54 DO PASS AS AMENDED.** **Motion** carried unanimously **14-0 voice vote.**

{Tape: 2; Side: B; Approx. Time Counter: 158 - 343}

EXECUTIVE ACTION ON HB 156

Motion: REP. RASER moved that **HB 156 DO PASS.**

Motion: REP. RASER moved that **HB 156 be amended.**

Discussion:

REP. RICE stated that the amendments to HB 156 totally negates the bill. **REP. NOENNIG** commented that the amendment was brought to define multiple misdemeanors but that he does not like the amendments. **REP. NEWMAN** stated that he liked the bill without the amendment; that the amendment does not negate the bill but does change it.

Vote: Motion that **HB 156 BE AMENDED** carried 11-6 roll call vote with **GALLUS, GUTSCHE, NEWMAN, PARKER, RASER, and SALES** voting no.

Motion/Vote: **REP. GALLUS** moved that **HB 156 DO PASS AS AMENDED**. Motion carried 15-3 voice vote with **NOENNIG, PARKER, and SALES** voting no.

{Tape: 3; Side: A; Approx. Time Counter: 1 - 124}

ADJOURNMENT

Adjournment: 12 P.M.

REP. JIM SHOCKLEY, Chairman

LISA SWANSON, Secretary

JS/LS

EXHIBIT (juh10aad)